

REMARKS

The Examiner contends that claims 17-19, 21-24, 26, 29 and 42-44 are distinct from claims 25, 30 and 31. Therefore, based on the present Restriction Requirement, the Examiner is requesting that an election of claims be made at this time.

Responsive to the present Restriction Requirement, Applicants, in a good faith effort to expedite the prosecution of this application, hereby provisionally elect the claims of Group I, claims 17-19, 21-24, 26, 29 and 42-44, without prejudice to the inclusion of the subject matter of the non-elected claims in any later filed divisional or continuation application(s). Nonetheless, Applicants traverse the Examiner's Restriction Requirement with respect to the election as more fully set forth below.

Under the "Guidelines" for restriction requirement practice, the Examiner is required to "provide reasons and/or examples to support conclusions" for the restriction requirement in view of the standard set forth in MPEP 803. The Examiner only generically states that searching claim Groups I and II together "would impose a serious search burden." However, the Examiner provides no substantiation of the burden.

Accordingly, Applicants traverse the present restriction requirement because Applicants respectfully contend that in the event that the Examiner performs a prior art search directed to a polypeptide of the present invention, the Examiner will necessarily uncover art pertaining to a recombinant cell comprising that polypeptide, if such art exists. Therefore, Applicants respectfully request withdrawal of this restriction requirement.

Summary

Applicants respectfully request withdrawal of the restriction requirement. In doing so, Applicants make no assertion as to the relatedness of the claims restricted by the Examiner. Rather, Applicants merely submit that the Examiner has not met her burden in demonstrating that a prior art search of all pending claims would be unduly burdensome.

Withdrawal of the restriction and examination of all pending claims on the merits at the earliest possible time is respectfully requested.

Respectfully submitted,

THOMAS MACIAG ET AL.

10-JAN-2006

Date

By: 

THOMAS M. SOSSONG, JR. (Ph.D., J.D.)

Registration No. 48,463

DRINKER BIDDLE & REATH, LLP

One Logan Square

18th & Cherry Streets

Philadelphia, PA 19103-6996

Telephone: (215) 988-2700

Direct Dial: (215) 988-2562

Facsimile: (215) 988-2757

E-Mail: thomas.sossong@dbr.com

dup